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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JERRY LEE OWENS,

Defendant and Appellant.

F077447

(Fresno Super. Ct. No. F17902111)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Fresno County. John Gallagher, James A. Kelley, Jr., Alvin L. Harrell III, and Carlos Cabrera, Judges.<sup>†</sup>

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Smith, Acting P.J., Meehan, J. and DeSantos, J.

<sup>†</sup> Judge Gallagher presided over the arraignment; Judge Kelley presided over the competency hearing and hold-to-answer arraignment; Judge Harrell presided over the preliminary hearing and ruled on appellant's motion to suppress; and Judge Cabrera presided over the settlement conference and sentencing hearing.

## **INTRODUCTION**

After his motion to suppress was denied, appellant Jerry Lee Owens entered into a plea agreement in two superior court cases involving Vehicle Code<sup>1</sup> offenses, in exchange for an indicated total term of four years. He pled to a total of five offenses and admitted four prison prior enhancements and a Penal Code section 12022.1 out-on-bail enhancement. The trial court imposed sentence in accordance with the plea agreement.

Owens appeals, but did not request a certificate of probable cause. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

Because Owens pled to the charges, we take many of the facts of the offenses from the probation report.

### ***Case No. F17902111***

On March 3, 2017, around 4:29 a.m., Fresno police officers observed a black Mercedes without a rear license plate.<sup>2</sup> There were paper dealer plates on the Mercedes. Officer Omar Barraza and his partner were in a patrol vehicle; they followed the Mercedes and activated the patrol car's overhead lights. Contact was made with Owens, the driver, who was asked to turn off his vehicle. Instead, Owens fled.

When Owens fled the scene, the patrol vehicle gave pursuit. The speed of the Mercedes fluctuated between 30 and 50 miles per hour. During the pursuit, the Mercedes failed to stop at three stop signs, before crashing into a parked vehicle. Owens was placed under arrest.

At the time of his arrest, Owens had objective signs of being under the influence of alcohol. Owens refused to provide a breath sample. Owens was transported to a local

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<sup>1</sup> All further statutory references are to the Vehicle Code unless otherwise specified.

<sup>2</sup> The probation report erroneously states the date as May 3, 2017.

hospital for treatment of injuries and a blood draw was taken at that time. Owens had a 0.29 percent blood-alcohol level.

On April 11, 2017, a complaint was filed as superior court case number F17902111 (case 2111) charging Owens in count 1 with a violation of section 2800.2, subdivision (a), evading an officer; in count 2, with violating section 21352, subdivision (b), driving with a blood-alcohol level of 0.08 percent or higher; and in count 3 with violating section 23152, subdivision (a), driving under the influence of alcohol. It also was alleged that Owens had suffered a prior DUI conviction within the meaning of section 23550.5, subdivision (a). In addition, it was alleged that Owens had served four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

At the June 15, 2017, arraignment, Owens pled not guilty and denied all allegations and enhancements. Bail was set. The trial court placed interim conditions on Owens, including ordering him not to possess or consume any alcohol and to attend and provide proof of attendance at Alcoholics Anonymous (AA) meetings.

***Case No. F17906942***

On November 17, 2017, around 1:39 p.m., a Fresno County sheriff's deputy observed a Mercedes vehicle straddling the double yellow lines separating the directions of travel. The deputy followed the Mercedes and effected a traffic stop. The driver was Owens. Owens was observed to have objective signs of alcohol intoxication; his speech was slurred, and he had to lean against his vehicle to maintain his balance.

A California Highway Patrol officer was asked to conduct a DUI investigation. The CHP officer attempted to ask Owens field sobriety questions; Owens refused to take any tests and asked to be taken to the county jail. Owens was advised of the concept of implied consent, but Owens refused to submit to a field sobriety test.

A search warrant was obtained, and Owens was transported to the local hospital for a blood test. The blood draw established that Owens had a blood-alcohol level of

0.17 percent. Charges were filed in this case as superior court case number F17906942 (case 6942).

### ***Proceedings***

On November 21, 2017, Owens was before the trial court in case 2111. The trial court declared a doubt as to Owens's competency to stand trial. Criminal proceedings were suspended, and Dr. Luis Velosa was appointed to examine Owens.

On December 12, 2017, the trial court received the report of Dr. Velosa, and the trial court found Owens competent to stand trial. Criminal proceedings were reinstated. Owens's private attorney was relieved as counsel and the trial court appointed the public defender to represent Owens.

At the pre-preliminary hearing on December 22, 2017, Owens was remanded into custody.

On January 18, 2018, Owens filed a motion to suppress evidence (Pen. Code, § 1538.5). Owens argued that he did not consent to the March 3, 2017, blood draw, and officers did not obtain a warrant prior to the blood draw. The hearing on the motion to suppress was held on January 25, 2018.

At the suppression hearing, Officer Christopher Perry testified that Owens was transported to the hospital for treatment of injuries after his collision on March 3, 2017. Owens was taken to the trauma area of the hospital and staff were "going to inject him with narcotics." Because Perry had determined that Owens currently was on probation for a DUI, and narcotics were going to be administered by the hospital immediately, Perry "requested a[n] exigent circumstance blood draw from the phlebotomist" at the hospital.

Officer Perry had determined that Owens was on probation for a DUI because he ran a record check on Owens, and dispatch reported back that Owens had "three priors for DUI" and was subject to a search and seizure condition of probation. Initially, Perry asked the hospital to hold off on injecting Owens with narcotics, but the staff indicated

that was not appropriate. Perry then requested the blood draw. Perry was present while the phlebotomist completed the blood draw. Perry took possession of the blood draw and booked it into evidence.

Officer Perry testified that Owens had refused to provide a breath sample. Owens was not asked to consent to the blood draw. Perry opined that because Owens was on probation and the exigent circumstances, Owens's consent to a blood draw was not required. Perry testified there was no time to obtain a warrant before taking the blood draw because the hospital was going to immediately administer narcotics.

The trial court found Officer Perry had a good faith belief Owens was on probation and subject to a search and seizure condition, and that the hospital staff were going to pump Owens full of drugs. The trial court held that under these circumstances, the extraction of the blood without a warrant was "appropriate."

On March 8, 2018, Owens was before the trial court in cases 6942 and 2111. Defense counsel stated Owens intended to "essentially [enter] pleas to the sheet in both cases" in exchange for the indicated sentence of four years offered by the trial court. Defense counsel opined that the "way to get to four years would be two years in case ending 111 with a consecutive two years in case ending 942."

The trial court then proceeded to inquire of Owens if he understood the plea articulated by defense counsel and if Owens agreed; Owens responded affirmatively. The trial court had a felony waiver of rights and plea form and confirmed Owens had signed and initialed the form; did not have any questions about the form or the consequences of his plea; and did not have questions about the rights he was "giving up." The trial court accepted a waiver of rights.

The parties stipulated that the police reports and preliminary hearing transcripts provided a factual basis for the pleas. The trial court then proceeded to accept Owens's no contest pleas to the three counts in case 2111 and his admission to the four prison prior enhancements in that case.

The trial court then proceeded to address case 6942. The trial court referenced the felony waiver of rights form for this case and again asked Owens if he had any questions about the form, the rights he was waiving, or the consequences of his plea. Owens responded, “No,” to each question. The trial court accepted a waiver of rights from Owens.

The parties again stipulated that the police report and preliminary hearing transcript provided a factual basis for the plea. The trial court proceeded to accept a plea of no contest in case 6942 to count 1, a violation of section 23152, subdivision (b), and count 2, a violation of section 23152, subdivision (a). Owens admitted various allegations and enhancements, including an out-on-bail enhancement.

Sentence was imposed in both cases on May 1, 2018, and the trial court imposed a total sentence in conformance with the plea agreement. In case 2111, the trial court imposed the mitigated term of 16 months for count 1; a concurrent term of 16 months for count 2; and a term of 16 months for count 3, stayed pursuant to Penal Code section 654. The trial court struck all four of the prison prior enhancements.

In case 6942, the trial court imposed one-third the midterm, or eight months, for count 1. On count 2, the trial court imposed one-third the midterm, eight months, stayed pursuant to Penal Code section 654. For the out-on-bail enhancement, a violation of Penal Code section 12022.1, the trial court imposed a term of two years. The prior prison enhancements were stricken.

The trial court ordered that the terms imposed in case 6942 were to be served consecutive to the terms imposed in case 2111, for a combined total term of four years. Credits of 166 actual days, plus 166 conduct days, were awarded for a total of 332 days. Various statutory fines and fees were imposed.

The abstract of judgment accurately sets forth the oral pronouncement of judgment. Owens filed a notice of appeal, checking the box stating it was an appeal of a

denial of a motion to suppress. No certificate of probable cause was requested or obtained.

### **DISCUSSION**

Appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436 on November 1, 2018. That same day, this court issued its letter to Owens inviting him to submit a supplemental brief. No supplemental brief was filed.

In his notice of appeal, however, Owens indicated he was appealing the denial of his motion to suppress evidence. The motion to suppress evidence was filed in case 2111 and alleged that the March 3, 2017, blood draw violated his Fourth Amendment rights because Owens did not consent, and the officer did not obtain a warrant.

California, however, has an implied consent statute. Section 23612, subdivision (a)(1)(A) provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for purposes of determining the alcohol content, if lawfully arrested for a violation of section 23140, 23152, or 23153. Owens had been placed under arrest for a violation of section 23152, driving while under the influence of alcohol, at the time of the blood draw.

Moreover, exigent circumstances justified the warrantless blood draw. A trial court looks to the totality of the circumstances to determine whether law enforcement faced an emergency that justified acting without a warrant. (*People v. Toure* (2015) 232 Cal.App.4th 1096, 1103.) The relevant factors to assess in determining whether a warrantless search is reasonable include the practical problems of obtaining a warrant within a time frame that still preserves the opportunity to obtain evidence. (*Missouri v. McNeely* (2013) 569 U.S. 141, 164.) Here, the evidence, Owens's blood, was about to be immediately compromised because the hospital staff intended to administer narcotics and would not delay the administration of narcotics, which delay would have allowed Officer Perry time to obtain a warrant.

By entering a plea of no contest, Owens admitted the sufficiency of the evidence establishing the substantive offenses, and, therefore, is not entitled to a review of any issue going to the question of guilt of the underlying offenses. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42.) Once a no contest plea is entered in exchange for specified benefits, both parties must abide by the agreement. (*People v. Segura* (2008) 44 Cal.4th 921, 929–930.) Owens received the benefit of his bargain. The trial court imposed a sentence that was in accordance with the plea agreement. Having received the benefit of his bargain, he cannot “better the bargain through the appellate process.” (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

#### **DISPOSITION**

The judgment is affirmed.